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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Charlotte Division  
*Statesville*

FILED  
CLERK OF COURT  
08/26/03 09:10  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE

**FITEL USA CORP.**

Plaintiff,

v.

**ALCATEL,**

**Alcatel NA Cable Systems, Inc. (d/b/a  
Alcatel Telecommunications Cable),  
and Alcatel USA,**

Defendants.

C.A. No. 5:03CV111

**COMPLAINT FOR PATENT INFRINGEMENT**

For its complaint, plaintiff Fitel USA Corp. avers and alleges as follows:

**The Parties**

1. **Plaintiff, Fitel USA Corp. ("Fitel")** is a Delaware corporation having its principal place of business at 2000 Northeast Expressway, Norcross, Georgia 30071. Fitel designs, manufactures, and supplies leading edge optical fiber, optical fiber cable, optical connectivity products and specialty photonics products for high speed optical networks.

2. **Defendant, Alcatel ("Alcatel")** is a French corporation having a principal place of business at 53 Rue Jean Broutin, VP147 78703 Conflans-Sainte-Honorie, France. Upon Information and belief, Alcatel is doing business in North Carolina by, through and in concert with several of its subsidiaries.

3. **Defendant, Alcatel NA Cable Systems, Inc. ("Alcatel CS")** is a Delaware corporation having a principal place of business at 39 Second St., N.W. Hickory, North Carolina

28601. Upon information and belief, Alcatel CS is a wholly owned subsidiary of Alcatel and is doing business in North Carolina.

4. **Defendant, Alcatel CS, additionally d/b/a Alcatel Telecommunications Cable (“Alcatel TC”)** has a principal place of business at 2512 Penny Road, Claremont, North Carolina 28601. Upon information and belief, Alcatel TC is a wholly owned and operated division of Alcatel CS and is doing business in North Carolina.

5. **Defendant, Alcatel USA (“Alcatel US”)** is a Delaware corporation having a principal place of business at 510 Commerce St., Claremont North Carolina 28329 and 2912 Wake Forest Road, Raleigh, North Carolina 27609. Upon information and belief, Alcatel US is a wholly owned subsidiary of Alcatel and is doing business in North Carolina.

6. **Defendants, Alcatel, Alcatel CS, Alcatel TC, Alcatel US (“Alcatel Group”),** are closely affiliated companies owned by and under the common control of Alcatel.

#### **Jurisdiction And Venue**

7. This is an action for patent infringement arising under the U.S. Patent Laws, Title 35 U.S.C. § 1, et seq. This Court has jurisdiction over this action under 28 U.S.C. § 1338(a). Upon information and belief, each and every one of the Alcatel Group is subject to personal jurisdiction in the state of North Carolina. Venue is proper in this Court pursuant to 28 U.S.C. §§1391 and 1400.

#### **The Patent in Suit**

8. On May 18, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,905,838 (“the ’838 patent”), entitled “Dual Window WDM Optical Fiber Communication” A copy of the ’838 patent is attached hereto as Exhibit A.

9. Fitel, through assignment, is the owner of the entire right, title and interest in and to the '838 patent (the "Fitel patent").

### **Background Facts**

10. The '838 patent relates generally to an optical fiber adapted for operation in dual bands including wavelength division multiplexing ("WDM") capabilities in each band ("Metro fiber"), and to WDM optical communications systems comprising this type of optical fiber ("Metro Systems").

11. Such Metro fiber, and Metro systems using this type of optical fiber, as set forth in the claims of the '838 patent were pioneered by Fitel and its predecessor in interest, Lucent Technologies, Inc. through extensive investments of time and money in research and development. The inventiveness represented by these scientific advances was recognized by the United States Patent Office through a grant of the '838 patent. Fitel has also made and continues to make extensive expenditures of time and money for advertising, marketing and additional technical developments relating to these inventions.

12. Upon information and belief, Alcatel owns optical fiber production plants in Douvrin, France which manufacture Metro fiber covered by one or more claims of the '838 patent. Alcatel's Metro fiber is designated by the trademark TeraLight with a suffix of Metro or Ultra. The specifications of TeraLight Metro and TeraLight Ultra are attached hereto as Exhibits B and C, respectively. Upon information and belief, the TeraLight specifications are used as sales literature and are available in North Carolina and throughout the United States via the Internet and Alcatel Group sales representatives in North Carolina.

13. Upon information and belief, Alcatel imports, stores at, offers to sell and sells its Metro fiber to at least one fiber optic cable manufacturer in North Carolina including Alcatel CS and Alcatel TC.

14. Upon information and belief, Alcatel manufactures its Metro fiber into fiber optic cable in High River, Ontario, Canada; Santander, Spain; Moechen, Germany; or Claremont, North Carolina.

15. Upon information and belief, Alcatel imports, stores at, offers to sell and sells its cabled Metro fiber to at least one fiber optic cable manufacturer in North Carolina including Alcatel CS and Alcatel TC.

16. Upon information and belief, Alcatel CS and Alcatel TC cable offer for sale and sell cabled Metro fiber in North Carolina and throughout the United States. Alcatel's Optical Fiber Division, operating as part of Alcatel TC and having responsibility for marketing and selling infringing Metro fiber throughout the United States, is headquartered at Claremont, North Carolina and takes orders and coordinates delivery of those sales from its offices in this State. Upon information and belief, Alcatel's Optical Fiber Division has made offers for sale to customers, received orders from customers, or shipped orders for infringing Metro fiber in California, Mississippi, Virginia, and other places in the United States.

17. One of the marketing tools used by Alcatel CS and Alcatel TC to offer for sale and to sell infringing Metro fiber is an article published by Jim Ryan, product manager for the Metro fiber at the Optical Fiber Division in Claremont, North Carolina, entitled "Fiber Considerations for Metropolitan Networks", attached hereto as Exhibit D. Upon information and belief, the article is used as sales literature and is available in North Carolina and throughout the United States via the Internet and Alcatel Group sales representatives in North Carolina.

18. Upon information and belief, Alcatel US and Alcatel CS sell and offer for sale infringing Metro Systems incorporating Metro fiber in North Carolina and throughout the United States.

19. Upon information and belief, Alcatel Group, individually and in concert with each other, has made a wavelength division multiplexed (WDM) optical communications system

using Metro fiber, which system was designed to operate in wavelength windows, including 1310 nm and 1550 nm respectively.

### **Count 1 - Direct Infringement Of The '838 Patent**

20. The allegations of paragraphs 1 through 19 are incorporated herein by reference.

21. Upon information and belief, Alcatel Group, individually and in concert with each other, has directly infringed and continues to directly infringe the '838 patent by making, using, selling, offering for sale, or importing Metro fiber covered by one of more claims of the '838 patent.

22. As a consequence of Alcatel Group's infringement of the '838 patent, Fitel has been and continues to be damaged.

23. Unless enjoined, Alcatel Group will continue its infringing acts, thereby causing Fitel irreparable injury for which there is no adequate remedy by law.

### **Count II - Willful Infringement**

24. The allegations of paragraphs 1 through 23 are incorporated herein by reference.

25. Upon information and belief, at all times during which Alcatel Group, individually and in concert with each other, has directly infringed the '838 patent, it has been aware of the '838 patent and that its activities infringe the '838 patent.

26. Upon information and belief, Alcatel Group's infringement has been and continues to be deliberate and willful.

27. Fitel has requested that Alcatel provide a sample of its metro fiber so that Fitel can analyze the fiber for infringement of the '838 patent, but Alcatel has refused to provide a

sample. Accordingly, the allegations of paragraphs 12-26 are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

### **Jury Demand**


28. Fitel demands a trial by a jury on all issues which may be decided by a jury.

### **Prayer For Relief**

WHEREFORE, Fitel prays for judgment as follows:

- A. A finding and judgment that Alcatel Group, individually and collectively, infringes the '838 patent;
- B. A permanent injunction prohibiting the Alcatel Group, individually and collectively, or its affiliates, and their respective representatives, officers, directors, employees, or others under the control of or commonly controlled by any of them, from in the future directly infringing the '838 patent, or inducing or contributing to the infringement of the '838 patent by others including members of the Alcatel Group;
- C. A finding and judgment that the case is exceptional and an award of Fitel's reasonable attorney fees and costs pursuant to 35 USC §285;
- D. An award of damages adequate to compensate for the infringement, and that those damages be trebled pursuant to 35 USC §284; and
- E. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 26<sup>th</sup> day of August, 2003.

  
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